

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	Barracrough et al.	Examiner:	Winder, P.
Application No.:	09/923,084	Group Art Unit:	2145
Filed:	August 6, 2001	Docket No.:	8X8S.125C1
Title:	Arrangement and Method for Displaying and Sharing Images		

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By:   
Kelly S. Watigney

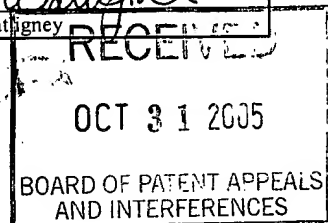
APPEAL BRIEF

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Sir:

This is an Appeal Brief submitted pursuant to 37 C.F.R. § 41.37 for the above-referenced patent application. Please charge Deposit Account No. 50-0996 (8X8S.125C1) in the amount of \$500.00 for this brief in support of appeal as indicated in 37 C.F.R. § 41.20(b)(2). If necessary, authority is given to charge/credit deposit account 50-0996 (8X8S.125C1) any additional fees/overages in support of this filing.

Attached please find a Petition for Extension of Time.

## **I. Real Party in Interest**

The real party in interest is the assignee, 8x8, Inc.

## **II. Related Appeals and Interferences**

Appellant is unaware of any related appeals, interferences or judicial proceedings that would have a bearing on the Board's decision in the instant appeal.

## **III. Status of Claims**

Claims 1-22 and 24-28 are presented for appeal and each of the appealed claims, 1-22 and 24-28, is rejected. Claim 23 has been canceled. The pending claims under appeal, as presently amended, may be found in the attached Appendix of Appealed Claims.

## **IV. Status of Amendments**

Claim 23 was canceled subsequent to the final Office Action dated April 26, 2005, and the Advisory Action dated July 6, 2005, indicated that the amendment was entered.

## **V. Summary of the Claimed Invention**

The independent claims involved in the appeal are directed to a method and arrangement of sharing and displaying images using an internet access appliance with internet telephony and image capture capability for commercial and non-commercial use.

An example embodiment of the present invention is directed to a method for displaying and sharing digital images using an internet access appliance with internet telephony and image capture capability. *See, e.g.*, Fig. 1 and the corresponding discussion at page 4, lines 8-22. The method includes capturing digital images of an item being viewed by a sender (lines 10-11), downloading the digital images to the internet access appliance or directly to network storage through the appliance (line 11), and including the digital images with a first email addressed and sent to a server (lines 11-12). The first email is parsed at the server and the images are posted to a storage location where the images are stored (lines 13-14). The method further includes selecting at least one set of individuals (each set including at least one individual) for whom targeted images are to be sent (line 16), sending a communication to the at least one set of individuals to notify them of the posted images (lines 15-17), and while viewing the item, using the internet access appliance to establish a

telephony connection with the at least one individual who converses with the sender and concurrently reviews the posted images (page 5, lines 8-13).

Another example embodiment of the present invention is directed to a method for displaying and sharing digital images using an internet access appliance with telephony and image capture capability. *See, e.g.*, Fig. 1 and the corresponding discussion of a specific embodiment at page 6, line 4 – page 7, line 7. The method includes posting at least one digital image (of an item captured by a sender) via a server to a web page where the at least one image is made available for viewing (page 6, lines 6-9), selecting at least one individual for whom the at least one image is to be made accessible for viewing (page 6, lines 9-11), and notifying the at least one individual of the at least one image being posted to the web page (page 6, line 11). While viewing at least one image, the internet access appliance is used to establish a telephony connection between the at least one individual and a second individual where both individuals concurrently review the at least one image at the web page (page 6, lines 11-16). Another variation of this embodiment is disclosed in claim 20.

Another example embodiment of the present invention is directed to an arrangement for displaying and sharing digital images using an internet access appliance with internet telephony and image capture capability. *See, e.g.*, Fig. 1 and the corresponding discussion at page 4, line 8 – page 5, line 20. The arrangement includes a means for capturing digital images of an item being viewed by a sender (*e.g.*, digital camera or camcorder 100), a means for downloading the digital images to the internet access appliance or directly to network storage through the appliance (*e.g.*, internet access appliance 110 such as a personal computer or a videophone, more specifically the VC55 Set Top manufactured by 8x8, Inc.), and a means for including the digital images with a first email addressed and sent to a server (*e.g.*, internet access appliance 110 such as a personal computer or a videophone, more specifically the VC55 Set Top manufactured by 8x8, Inc.).<sup>1</sup> The arrangement also includes a means for parsing the first email at the server and posting the images to a web page where the images are stored (*e.g.*, web server 120), a means for selecting at least one set of individuals (each set including at least one individual) for whom targeted images are to be sent (*e.g.*,

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<sup>1</sup> Appellant notes that multiple means limitations may optionally be implemented using the same device (internet access appliance). A single structural element may perform two functions and may support two different claim terms. *Reed v. Edwards*, 26 C.C.P.A. 901, 101 F.2d 550, 554, 40 USPQ 620, 622 (CCPA 1939); *In re Kelley*, 49 C.C.P.A. 1359, 305 F.2d 909, 914, 134 USPQ 397, 401 (CCPA 1962) (as cited in the unpublished decision of *Winbond Elec. Corp. v. Int'l. Trade Comm.*, 4 Fed.Appx. 832, 2001 WL80412 (Fed. Cir. Jan. 13, 2001)).

sender at the internet access appliance 110 such as a personal computer or a videophone, more specifically the VC55 Set Top manufactured by 8x8, Inc.), and a means for sending a communication to the at least one selected set of individuals to notify of the images posted to the web page (*e.g.*, internet and web server 120). The arrangement further includes a means for, while viewing the item, using the internet access appliance to establish a telephony connection with said at least one individual who converses with the sender and concurrently reviews the posted images (*e.g.*, internet access appliance 110 such as a personal computer or a videophone, more specifically the VC55 Set Top manufactured by 8x8, Inc.). Another variation of this embodiment is disclosed in claim 19, *e.g.*, an arrangement as described above without a means for parsing.

As required by 37 C.F.R. § 41.37(c)(1)(v), a concise explanation of the subject matter defined in the independent claims involved in the appeal is provided herein. Appellant notes that representative subject matter is identified for these claims; however, the abundance of supporting subject matter in the application prohibits identifying all textual and diagrammatic references to each claimed recitation. Appellant thus submits that other application subject matter, which supports the claims but is not specifically identified above, may be found elsewhere in the application. Appellant further notes that this summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellant refers to the appended claims and their legal equivalents for a complete statement of the invention.

## **VI. Grounds of Rejection on Appeal**

**A. Claims 1-8, 10-22, and 24-28 are rejected under 35 U.S.C. § 103(a) over Mayle *et al.* (U.S. Patent No. 6,018,774) in view of Roberts *et al.* (U.S. Patent No. 6,295,551).**

**B. Claim 9 is rejected under 35 U.S.C. § 103(a) over Mayle *et al.* and Roberts *et al.* and further in view of Fredlund *et al.* (U.S. Patent No. 5,666,215).**

## **VII. Argument**

**A. The rejection of claims 1-8, 10-22, and 24-28 is improper because the Examiner fails to present any evidence of motivation that a skilled artisan would combine the cited references as asserted and the Examiner's stated motivation is improperly based upon hindsight reasoning.**

No logic or evidence of motivation has been presented to suggest that the skilled artisan would modify the '774 reference with teachings from the '551 reference. In order to present and maintain a *prima facie* Section 103(a) rejection the Examiner must show that one skilled in the art would be led to modify the primary reference (here, the '774 reference) "in view of" certain teachings absent in the primary reference but suggested by other references (*i.e.*, the '551 reference). *See*, MPEP § 706.02(j). None of the cited portions of the asserted references support the proposed modification of the '774 reference. Instead, the Examiner erroneously construes the teaching of the '774 reference, uses unsupported hindsight rationale, and ignores teachings of the '774 reference and proposes replacing them with teachings from the '551 reference.

Assuming that the rejection is "over the '774 reference in view the '551 reference,"<sup>2</sup> the Examiner's rejection is based on the flawed assertion that the skilled artisan would replace the CPU-server arrangement of the '774 reference with an entirely different CPU-server arrangement, as taught by the secondary '551 reference. More specifically, at page 3 of the final Office Action, the Examiner erroneously asserts that the '774 reference does not teach "an Internet appliance with Internet telephony capability," and argues that this

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<sup>2</sup> The Examiner's rejection is "over the '774 reference in view the '551 reference"; however, at one point the Examiner's explanation of the modification is to incorporate the system of the '774 reference (*i.e.*, the '774 CPU-server arrangement "for uploading images") into the Internet-telephony system of the '551 reference to improve the effectiveness of the latter system. This alternative perspective is even more illogical as addressed below under subheading B.

deficiency is readily overcome in view of the Internet appliance taught by the secondary '551 reference.

As discussed further below, the CPU-server arrangement of the '774 reference is the crux of the '774 disclosure; replacing it with the CPU-server arrangement of the secondary '551 reference is: (1) based on an illogical interpretation of the '774 reference; (2) unsupported by any relevant citation to the prior art; and (3) would undermine the purpose and/or operation of the CPU-server arrangement of the '774 reference.

### **1. The Examiner's Illogical Interpretation of the '774 Reference**

In an attempt to find a way to employ the '551 CPU-server arrangement, after alleging that the Appellant's claimed invention corresponds almost entirely to the teachings of the '774 reference, the Examiner's rejection erroneously alleges that the '774 reference "does not specifically teach an Internet appliance with Internet telephony capability." See final Office Action at page 3. However, the '774 reference clearly identifies a user's personal computer as an internet appliance that connects to the Internet using a modem and a telephone line. Col. 7, lines 40-43. The '774 reference explains that this internet appliance uses standard SLIP (Serial Line Internet Protocol) or PPP software wherein the user instructs the modem to dial an Internet Service Provider. Col. 7, lines 43-45. SLIP is a communications protocol that allows a computer to connect to the Internet itself using a telephone line. Contrary to the Examiner's assertion: the '774 reference teaches an internet access appliance having internet telephony capabilities; and there is no place in the system of the '774 CPU-server arrangement for inserting the '551 CPU-server arrangement (without replacing the '774 CPU-server arrangement).

### **2. The Rejection is Unsupported by Any Relevant Citation to the Prior Art**

None of the cited portions of the asserted references support the proposed modification of the '774 reference. At the bottom of page 3, the final Office Action alleges that the motivation for the modification would be for uploading images into the Internet-telephony system of the '551 reference to improve the effectiveness of the latter system. The motivation would have been to use another possible source of the shared images, in this case, captured images. As evidence in support of this alleged suggestion by the prior art, the

Examiner cites the '551 reference at column 12, lines 10-14, which states: "The shared content can include web pages, files, application images, advertisements, interactive forms data, or application data, among any other form of data that can be captured and displayed on the browser."

This citation is illogical and unrelated to any basis for alleging that the skilled artisan would be led to modify the '774 reference with the '551 CPU-server arrangement. Moreover, improving the effectiveness of the '551 CPU-server arrangement is entirely unrelated to any reason for modifying the '774 reference.

The '774 reference does not use a CPU with internet-telephony capabilities in the manner claimed in the present invention. The Examiner has not presented any evidence from the asserted references that a skilled artisan would use (or modify) the cited references to correspond to the claimed invention and instead has used hindsight reasoning in an attempt to piece together disparate teachings. Merely because the proposed combination could have the capability of corresponding to the claimed invention is not evidence that it does. Without a presentation of evidence from the cited teachings, that one skilled in the art would combine the cited teachings to achieve the limitations of the claimed invention, the Section 103(a) rejection is improper and should be reversed.

### **3. The Rejection Would Undo the Purpose/Operation of the '774 Reference**

The Examiner's proposed modification would frustrate the purpose and operation of the CPU-server arrangement around which teachings of the '774 reference are based. The MPEP states that when a proposed modification would render the teachings being modified unsatisfactory for their intended purpose, there is no suggestion or motivation to make the proposed modification under 35 U.S.C. § 103(a). *See* MPEP § 2143.01. In an attempt to introduce functionality directed to using an internet access appliance to establish a telephony connection with at least one individual who converses with a sender and concurrently reviews a posted message into the '774 reference, the Examiner's confusing rationale might be intending replace the '774 server with the '551 server (the device that generates user applet 22 which enables a user computer 12 communicate with a server and a second computer, Col. 3, lines 37-50). The '774 server 31 shown in Fig. 2, is a Pentium Pro-based computer connected to the Internet running the Linux operating system and the MetaHTML

web server software 61 used to respond to a request made over the Internet to view a web page by returning a reply in the form of text describing the page in the hyper text markup language (HTML) format. The server 31 is also adapted to process and store (using both temporary and permanent storage) data that is transmitted to the server over the Internet. Replacing the '774 server with the '551 server, would replace the functionality of the '774 server with the functionality of the '551 server.

According to the '551 reference, this functionality is incompatible with the functionality of the '774 server. In the '551 reference, both the user computer and any second computers need an applet (specially-designed for certain functionality) to establish a link and communicate with the '551 server. *See* '551 reference at column 3, lines 38-43. As the Examiner's combination would not include any aspects of these applets which are necessary for communicating with the server (and the proposed combination as described at page 3 of the Office Action would not include the '551 server), neither the '551 user computer nor the '774 user computer would be able to communicate with the server. The Examiner has thrown two ambiguous sets of teachings together rendering no operable aspects of communication from either reference. Such a combination would render an inoperable device that would clearly frustrate the purpose of the intended CPU-server communication arrangement.

**B. Assuming the Section 103(a) rejection of claims 1-8, 10-22, and 24-28 is not as stated (“over the ‘774 reference in view the ‘551 reference”) but is rather “over the ‘551 reference in view the ‘774 reference,” the rejection is flawed for substantially the same reasons as discussed above.**

The rejection would also be illogical and unsupported if one were to assume that the Examiner intended for the rejection to be “over the '551 reference in view of the '774 reference” and that the intent of the rejection was to incorporate the '774 CPU-server arrangement into the system of the '551 system. Assuming this alternative ground of rejection, the Examiner would be adopting the entire system of the '774 reference and would somehow insert this system into the system of the '551 reference in order to “improve the effectiveness” of the system of the '551 reference by using another possible source of the shared images. This rationale is improper.



First, such a rejection has not been clearly advanced in any of the correspondence leading up to the appeal.

Second, the effectiveness of the '551 system is unrelated to possible sources of the shared images. The stated purpose of the '551 reference is to coordinate multi-media communication by using applets that are downloaded from the server of the 551 reference to each of the image-communicating CPUs. By somehow inserting the '774 system into the system of the '551 reference, "the effectiveness" of the '551 system would be burdened by a duplicative or replacement server coordination-communication scheme. It is untenable to allege, in the abstract, that "the effectiveness" of the '551 system would be improved.

**C. Using either interpretation of the rejection of claims 1-8, 10-22, 24-28, the rejection is improper because the Examiner fails to present any evidence of correspondence to the claimed invention.**

The Examiner's possible proposed modification would not correspond to the claimed invention. As explained in the Abstract and elsewhere in the '551 reference, "A user may initiate a joint browsing, or synchronous collaboration, session by accessing a web page associated with the call center." The CPU-server arrangement of the '551 reference includes user CPUs that are not capable of capturing and uploading images to the server of the '551 reference. The CPU-server arrangement of the '774 reference includes user CPUs that are not capable of permitting for a pair of users to converse via the users' CPUs (one being the alleged internet access appliance). Thus, by combining these references, the resultant system has two different types of CPUs: one according to the teaching of the '774 reference and one according to the teaching of the '551 reference. Neither of these two different types of CPUs is able to: (a) capture and upload images to any server, and (b) permit for a pair of users to converse via the users' CPUs. More specifically, the user CPU of the '774 reference is deficient in that it does not have user-voice conversation software for communicating with the server as claimed by Appellant, and it does not have user-voice conversation hardware operating in concert with such server-interface software for communicating with the other user. Similarly, the user CPU of the '551 reference is deficient in that it does not have any such technology to permit for capturing and uploading images to any server for viewing by both users while permitting for user-voice conversation as claimed. The Examiner fails even to allege that there is prior art teaching providing any such correspondence in this regard.

**D. The Section 103(a) rejection of dependent claim 9 is improper because the Examiner fails to satisfy the requirements for a Section 103(a) rejection as shown with respect to the underlying independent claim.**

The rejection of dependent claim 9 is improper for the reasons discussed above in connection with independent claim 1. The rejection of claim 9 relies upon the same primary combination of the '774 reference with the '551 reference that is shown to be insufficient grounds of rejection as discussed above. "If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious." MPEP § 2143.03; *citing In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Thus, the rejection of dependent claim 9 under 35 U.S.C. § 103 should be reversed.

**E. Assuming the Examiner's objection of claim 21 as allegedly including new matter, is a typographical error and is to be construed as a rejection, the rejection should be reversed because claim 21 does not include new matter.**

With respect to the objection to the June 6<sup>th</sup> amendment, alleging that the added limitations "voice conversation" introduced new matter, Appellant traverses. The instant Specification supports the objected-to subject matter. Pursuant to 35 U.S.C. § 112, the original claims are considered part of the specification. Thus, claim language is part of the Specification. The MPEP explains that, with respect to either the claims or the disclosure, word-for-word correspondence is not a requirement for claim language. *See, e.g.*, MPEP § 2173.05(e). Appellant notes that both original claims 1 and 18 included limitations directed to "one individual who converses with the sender."

Moreover, two further examples provided in Appellant's original specification support this claim. At page 6, lines 14-16, describe a "voice conversation" between a realtor and a potential buyer. Further, at page 9, lines 1-3, the Appellant's original specification exemplifies one form of the Internet access appliance as a product being commercially-available from the assignee; this product being the Voice-Conferencing unit identified by model name: VC55 Set Top. Thus, the Specification provides support for the objected-to subject matter and the amendment did not introduce new matter to the application. Accordingly, Appellant requests that the objection/rejection be withdrawn.

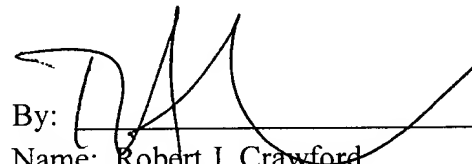
**VIII. Conclusion**

In view of the above, Appellant submits that the rejections are improper, the claimed invention is patentable, and that the rejections of claims 1-22 and 24-28 should be reversed. Appellant respectfully requests reversal of the rejections as applied to the appealed claims and allowance of the entire application.

Authority to charge the undersigned's deposit account was provided on the first page of this brief.

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## **APPENDIX OF APPEALED CLAIMS**

1. A method for displaying and sharing digital images using an internet access appliance with internet telephony and image capture capability, comprising the steps of:

capturing digital images of an item being viewed by a sender;

downloading the digital images to the internet access appliance or directly to network storage through the appliance;

including the digital images with a first email addressed to a server and sending the first email;

parsing the first email at the server and posting the images to a storage location where the images are stored;

selecting at least one set of individuals for whom targeted images are to be sent, each set including at least one individual;

sending a communication to the at least one selected set of individuals to notify of the posted images; and

while viewing the item, using the internet access appliance to establish a telephony connection with said at least one individual who converses with the sender and concurrently reviews the posted images.

2. A method, according to claim 1, wherein the images are accompanied by descriptions, and are included with the first email as attachments.

3. A method, according to claim 1, wherein the images are posted onto a web page with information imbedded into them, wherein the selected individuals visit the web page to view the images.

4. A method, according to claim 3, wherein clicking on the images initiates an internet phone call to the sender.

5. A method, according to claim 4, wherein an internet phone conference call is held between the sender and the selected individuals while simultaneously accessing web pages with images.
6. A method, according to claim 3, wherein clicking on the images initiates an email letter to the sender.
7. A method, according to claim 3, wherein clicking on the images initiates access to the sender's internet web page.
8. A method, according to claim 1, wherein the images that are of low to medium resolution can be downloaded for viewing across the internet.
9. A method, according to claim 1, wherein the images that are of high resolution are stored for making professionally-developed reprints.
10. A method, according to claim 1, wherein the sender also uses the internet access appliance for conversing with said at least one individual.
11. A method, according to claim 1, wherein the sets of selected individuals comprise potential purchasers of real estate and wherein the digital images comprise images of real estate property.
12. A method for displaying and sharing digital images using an internet access appliance with telephony and image capture capability, comprising the steps of:
  - posting at least one digital image via a server to a web page where the at least one image is made available for viewing, the at least one digital image being a digital image of an item captured by a sender;
  - selecting at least one individual for whom the at least one image is to be made accessible for viewing;

notifying the at least one individual of the at least one image being posted to the web page; and

while viewing at least one image, using the internet access appliance to establish a telephony connection between said at least one individual and a second individual, where the at least one individual and the second individual concurrently review the at least one image at the web page.

13. The method of claim 12, further comprising:

prior to posting the at least one digital image via the server to a web page, downloading the at least one digital image to the internet access appliance; and sending the at least one digital image to a server.

14. The method of claim 13, wherein downloading the at least one digital image to the internet access appliance includes downloading the at least one digital image directly to a network storage arrangement via the internet access appliance.

15. The method of claim 12, wherein the internet access appliance has internet telephony capability, wherein establishing a telephony connection between said at least one individual and a second individual includes establishing an internet telephony connection between the at least one individual and the second individual.

16. The method of claim 12, further comprising establishing access to the posted at least one digital image to a plurality of individuals, wherein any first one of the plurality of individuals is the selected at least one individual, and wherein any second one of the plurality of individuals is the second individual.

17. The method of claim 12, wherein the second individual is the sender.

18. An arrangement for displaying and sharing digital images using an internet access appliance with internet telephony and image capture capability, comprising:  
a means for capturing digital images of an item being viewed by a sender;

a means for downloading the digital images to the internet access appliance or directly to network storage through the appliance;

a means for including the digital images with a first email addressed to a server and sending the first email;

a means for parsing the first email at the server and posting the images to a web page where the images are stored;

a means for selecting at least one set of individuals for whom targeted images are to be sent, each set including at least one individual;

a means for sending a communication to the at least one selected set of individuals to notify of the images posted to the web page; and

a means for, while viewing the item, using the internet access appliance to establish a telephony connection with said at least one individual who converses with the sender and concurrently reviews the posted images.

19. An arrangement for displaying and sharing digital images using an internet access appliance with internet telephony and image capture capability, the arrangement comprising:

means for capturing digital images of an item being viewed by a sender;

means for downloading the digital images to the internet access appliance or directly to network storage through the appliance;

means for including the digital images with a first email addressed to a server and sending the first email;

means for selecting at least one set of individuals for whom targeted images are to be sent, each set including at least one individual;

means for sending a communication to the at least one selected set of individuals to notify of the posted images; and

means for using, while viewing the item, the internet access appliance to establish a telephony connection with said at least one individual who converses with the sender and concurrently reviews the posted images.

20. A method for displaying and sharing digital images using a telephony appliance with telephony, image capture and internet access capabilities, the method comprising:

capturing at least one digital image with the telephony appliance;  
posting the at least one captured digital image from the telephony appliance to a web page where the image is made available for viewing;  
selecting at least one individual for whom the at least one image is to be made accessible for viewing;  
notifying the at least one individual of the at least one image being posted to the web page; and  
while viewing at least one image, using the telephony appliance to establish a telephony connection between an individual at the telephony appliance and another individual, wherein the individual at the telephony appliance and the other individual concurrently review the at least one image at the web page.

21. The method of claim 20, wherein using the telephony appliance to establish a telephony connection between an individual at the telephony appliance and another individual includes establishing a voice conversation between the individual at the telephony appliance the other individual.

22. The method of claim 20, wherein posting the at least one captured digital image from the telephony appliance includes posting the image while using the telephony appliance to engage in a telephony conversation.

24. The method of claim 20, wherein capturing at least one digital image includes capturing video.

25. The method of claim 12, further comprising:  
capturing a digital image with the internet access appliance; and  
wherein posting at least one digital image includes posting the captured image with the internet access appliance.

26. The method of claim 25, wherein capturing a digital image includes using a digital image capturing device of the internet access appliance to capture the digital image.



27. The method of claim 25, wherein capturing a digital image includes capturing digital video.

28. The method of claim 12, wherein posting at least one digital image via a server includes using the internet access appliance to send the digital image to the server.

## **EVIDENCE APPENDIX**

None.

## **RELATED PROCEEDINGS APPENDIX**

None.